

Letter of Findings Number: 04-20140046P
Tax Administration
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register

ISSUE

I. Tax Administration–Negligence Penalty and Interest.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#); IC § 6-8.1-10-1.

Taxpayer protests the imposition of penalties and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana company. As the result of an audit, the Indiana Department of Revenue ("Department") determined that the Taxpayer had not collected and remitted the proper amount of Indiana sales and use tax as a retail merchant for the tax years 2010, 2011, and 2012. This underpayment resulted in penalties and interest. Taxpayer is protesting the penalties and interest resulting from the proposed assessment. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty and Interest.

DISCUSSION

The Department issued penalties for failure to remit taxes. Taxpayer protests the imposition of penalty and interest for the 2010-12 tax years. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). As a result of the protest process, Taxpayer has affirmatively established its failure to pay the deficiency was due to reasonable cause and not due

to negligence, as required by [45 IAC 15-11-2\(c\)](#). The penalty will be waived. However, now that Taxpayer is aware of its duties regarding sales tax collection, such a waiver may not be granted in the future.

However, pursuant to IC § 6-8.1-10-1(e) which states:

Except as provided by [IC 6-8.1-3-17\(c\)](#) and [IC 6-8.1-5-2](#), the department may not waive the interest imposed under this section.

In other words, the Department does not have the authority to waive the interest in this case.

FINDING

Taxpayer's protest is sustained in part regarding the penalty and denied in part regarding the interest.

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